

CLIENT ALERTS

6th Circuit Revisits Whether Basic Minimum Education is a Fundamental Right

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We recently reported a significant decision by the 6th Circuit Court of Appeals, which hears federal appeals in the circuit that includes Michigan. (See Butzel Long Client Alert.) In the case of *Gary B. et al v. Gretchen Whitmer*, (No. 18-1855/1871, 6th Cir. 4/23/2020), the Court of Appeals held for the first time that a basic minimum education is a fundamental right entitling students to due process protection. The court defined a “basic minimal education” as one that provides “a chance at foundational literacy.”

However, on May 19 the Judges voted to rehear the matter *en banc*. That means that the case will be reviewed and decided by the entire Court, not simply by a three-judge panel. Typically, petitions for rehearing *en banc* are filed by the unsuccessful party on appeal, and are rarely granted. In this case, by contrast, the request was made by one of the appellate Judges themselves.

The effect of granting a rehearing *en banc* is that the previous opinion – the opinion finding that a basic minimum education is a fundamental right – is vacated and rendered null and void. The case is returned to the appellate docket for a new hearing and decision. Thus, the question of whether a basic education is a fundamental right entitling students to due process protections, and if so the parameters of what constitutes a basic education, remains still to be decided by the Court of Appeals.

Dan Tukul

313.225.7047

tukul@butzel.com

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